

Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** PBM Construction--Reconsideration

**File:** B-242221.3; B-242221.4

**Date:** August 12, 1991

Lawrence W. Luecking, Laurence & Associates, for the protester,  
John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest was properly dismissed as academic where the agency canceled the underlying solicitation.

2. Cancellation of solicitation was proper where the Certificate of Procurement Integrity clause included in solicitation did not contain a signature box or line and misled bidders regarding the certificate's signature requirement.

### DECISION

PBM Construction requests reconsideration of our decision in PBM Constr., B-241221.2, June 7, 1991, 91-1 CPD ¶ \_\_\_\_, in which we summarily dismissed its protest of the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62474-90-B-3727, issued by the Department of the Navy. We dismissed the protest because the agency canceled the solicitation, rendering the protest academic. PBM also protests the Navy's cancellation of the solicitation.

We deny the request for reconsideration and the protest.

The solicitation was issued on June 8, 1990, with an amended bid opening date of December 5. Amendment No. 0008 to the solicitation contained the full text of the Requirement for Certificate of Procurement Integrity (Sept. 1990) clause as set forth at Federal Acquisition Regulation (FAR) § 52.203-3, which included the applicable certificate, as well as instructions to bidders on how to execute the Certificate of Procurement Integrity. The certificate that was included in the IFB, which was essentially a photocopy of the certification clause provided at FAR § 52.203-8, did not

contain a signature line or signature block for bidders to complete. However, the instructions accompanying the certificate, in accordance with FAR § 14.404-2(m), stated that the "[f]ailure of a bidder to submit a signed certificate with its bid shall render its bid nonresponsive." (Emphasis added.) Thirteen bids were received, with PBM submitting the apparent low bid. Of the 13 bids, seven, including that of the protester, failed to include a signed Certificate of Procurement Integrity and were rejected as nonresponsive. PBM filed a protest with our Office challenging the rejection of its bid on April 19, 1991.

On June 6, during the pendency of PBM's protest, we were informed by the agency that the solicitation would be canceled and the requirement resolicited on the basis of our decision in Shifa Servs., Inc., B-242686, May 20, 1991, 70 Comp. Gen. \_\_\_, 91-1 CPD ¶ 483. In that decision, we stated that a bid could properly be rejected as nonresponsive for a bidder's failure to submit a signed Certificate of Procurement Integrity with its bid, but we found that because the certification clause included in the solicitation did not contain a signature line, a number of the bidders, including the protester, reasonably were misled regarding the solicitation's signature requirement. We concluded that although bid prices had been exposed, it would be in the best interest of the government to cancel the IFB and resolicit the requirement with a distinct signature line on the required Certificate of Procurement Integrity. Here, the solicitation contained a clause identical to the one in Shifa and several bidders including the protester failed to submit the required signed certificate. On this basis, the agency concluded that the result in Shifa would control and canceled the solicitation, indicating that it would resolicit the requirement using a distinct signature line on the required Certificate of Procurement Integrity. We then dismissed PBM's protest as academic.

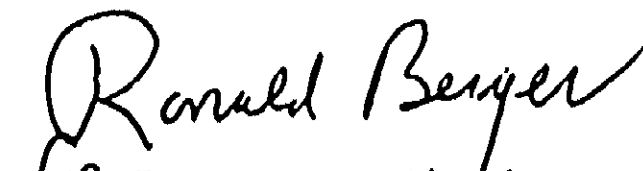
PBM requests that we consider the issues raised in its protest notwithstanding the agency's cancellation of the solicitation. We decline to do so. First, as we stated in our dismissal of its protest, the cancellation of a solicitation renders a protest academic, and we do not consider academic protests because to do so would serve no useful public policy purpose. Morey Mach., Inc.--Recon., B-233793.2, Aug. 3, 1989, 89-2 CPD ¶ 102. Moreover, the issues raised by the protester concerning the defect in the clause and the responsiveness of its bid have been resolved by our Office in Shifa Servs., Inc., B-242686, supra, and in Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 91-1 CPD ¶ 342; Inland Serv. Corp., B-242993, June 25, 1991, 91-1 CPD ¶ \_\_\_, respectively. We therefore deny the reconsideration request.

PBM also challenges the agency's cancellation of the solicitation, arguing that the cancellation interfered with the resolution of its protest and unnecessarily exposed the protester's prices.

Contracting officers have broad discretion in determining when it is appropriate to cancel an IFB. JoaQuin Mfg. Corp., B-238169.2, May 16, 1990, 90-1 CPD ¶ 474. However, the preservation of the integrity of the competitive bidding system requires that the contracting officer have a compelling reason to support the determination to cancel an IFB after bid opening. Id.

Here, the agency had a compelling reason to cancel because the Certificate of Procurement Integrity clause included in the solicitation did not contain a signature line and thus misled bidders, including PBM, regarding the certification's signature requirement. See Shifa Servs., Inc., B-242686, supra. Far from interfering with the resolution of PBM's protest, the agency action resulted in the corrective action to which the protester was entitled.

The request for reconsideration and protest are denied.

  
for James F. Hinchman  
General Counsel